

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Advanced Methods to Target and Eliminate	)	CG Docket No. 17-59
Unlawful Robocalls	)	

**REPLY COMMENTS OF CENTURYLINK**

**I. INTRODUCTION**

CenturyLink<sup>1</sup> files these reply comments in response to the Second Further Notice of Proposed Rulemaking (“SFNPRM”) released March 23, 2018 in the above-referenced docket. Numerous initial comments filed in this proceeding wisely call for resolution of the TCPA interpretation issues stemming from the D.C. Circuit Court of Appeals decision in *ACA International v. FCC* before moving forward with a regulatory mandate to create any new database resource.<sup>2</sup> Once these TCPA interpretation issues are resolved, the FCC will then be in position to analyze whether a new database resource is indeed necessary given existing commercial solutions. After such analysis, if the Commission decides the benefits of a new database would outweigh its costs, the initial comments show that it will be important – even essential – to promote use of this new database through a TCPA safe harbor. Further, if a new database resource is implemented, the record is clear that service providers must be reimbursed for costs they incur to make reassigned number information available. Finally, given how

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<sup>1</sup> These reply comments are filed by and on behalf of CenturyLink, Inc. and its subsidiaries.

<sup>2</sup> *ACA Int’l, et al. v. FCC*, 885 F.3d 687 (D.C. Cir. 2018).

frequently wireless number reassignments are occurring in the market,<sup>3</sup> CenturyLink reiterates its call for a wireless-only database to serve as a test bed for any database solution before it is more widely mandated.

## **II. THE FCC SHOULD RESOLVE TCPA INTERPRETATION ISSUES UNDER *ACA INTERNATIONAL* BEFORE MANDATING ANY NEW DATABASE**

Numerous commenters agree that the reassigned number problem the Commission seeks to address in this proceeding stems not from lack of a reassigned number database, but rather from a strained construction of the TCPA – specifically, the Commission’s definition of “called party” and the one-call safe harbor – in the *2015 TCPA Order*.<sup>4</sup> In the wake of the *ACA International* decision which vacated the *2015 TCPA Order*, the Commission is now, concurrent with this proceeding, addressing how to interpret these provisions.<sup>5</sup> As CTIA notes, the *ACA International* ruling “fundamentally alters the cost-benefit calculus of the database approaches in the [SFNPRM].”<sup>6</sup> For example, if, through that concurrent proceeding, the Commission concludes to find that “called party” means the party the caller intended to call (as opposed to the party receiving the call), the Commission stands to “negate the need for a potentially costly<sup>l</sup> reassigned number database while preserving the ability of consumers to stop calls to their

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<sup>3</sup> The SFNPRM estimates that there are 100,000 wireless numbers reassigned every day. *See* Statement of Commissioner Jessica Rosenworcel Approving in Part, Dissenting in Part, at 1, in association with the SFNPRM, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Second Further Notice of Proposed Rulemaking, FCC 18-31 (rel. Mar. 23, 2018).

<sup>4</sup> *See, e.g.*, PACE Comments at 2; ATIS Comments at 3-4.

<sup>5</sup> *See Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act In Light of the D.C. Circuit’s ACA International Decision*, CG Docket No. 18-152, CG Docket No. 02-278, Public Notice, DA 18-493 (rel. May 14, 2018). Comments were filed on June 13, 2018 and reply comments filed on June 28, 2018.

<sup>6</sup> CTIA Comments at 9.

numbers simply by informing the caller that the number was reassigned.”<sup>7</sup> Because the new legal liability standard for TCPA compliance is still very much in play, as is the demand for any new reassigned number database resource,<sup>8</sup> “the Commission should adopt a sequenced approach and first resolve the issues raised [by *ACA International*] before assessing the value of any new database requirements over existing voluntary, market-based solutions.”<sup>9</sup>

### **III. EXISTING COMMERCIAL DATABASE RESOURCES ARE LIKELY TO PROVE SUFFICIENT, MAKING A NEW TOOL UNNECESSARY**

Once the TCPA interpretation issues noted above are resolved, it will be important for the Commission to then examine whether existing commercial database options are sufficient before mandating a new database solution.<sup>10</sup> As noted by CTIA, a key question is whether the new database proposals in the SFNPRM are likely to significantly outperform existing commercial offerings.<sup>11</sup> The record shows that there are several existing commercial database options currently available which contain high degrees of accuracy.<sup>12</sup> Neustar asserts that “[t]he solutions offered by [it] and other commercial providers are considerably more robust than any

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<sup>7</sup> PACE Comments at 4 (footnote omitted). *See also* Comments of Noble Systems at 2 (noting how the definition of “automatic telephone dialing system” (“ATDS”) may also impact the demand for a new database resource, and thus should be resolved prior to moving forward here).

<sup>8</sup> Neustar Comments at 13 (noting that “a caller that makes calls without using autodialing capabilities under a revised definition of an ATDS would not be engaged in robocalling under the TCPA and thus would have no need to use a reassigned numbers database to avoid TCPA liability”).

<sup>9</sup> *See* CTIA Comments at 9.

<sup>10</sup> *See, e.g.*, Neustar Comments at 3 (describing how the TCPA interpretation issues “directly implicate[]” creation of a new database resource).

<sup>11</sup> CTIA Comments at 6.

<sup>12</sup> *See, e.g.*, CTIA Comments at 5-6 (stating that Neustar’s solution has approximately 90% of wireless subscribers; Early Warning’s solution has approximately 99% of wireless coverage, 97% landline coverage, and 93% VoIP coverage) (citations omitted).

database of reassigned or disconnected numbers the Commission could realistically create and maintain.”<sup>13</sup> In addition, aside from the robustness of existing solutions, NTCA describes that commercial databases are preferable to a Commission-established reassigned numbers database because a Commission-established database would, most likely, take longer to provide relief to consumers. This is due to the need to engage in an RFP process to select a database administrator combined with the time it will take to create the actual database itself.<sup>14</sup> Commenters also observe the unavoidable limitations of any Commission reassigned number database when it comes to spoofed numbers or bad actors, since any new database will not reasonably be capable of mitigating these types of illegal calls.

In light of these challenges with a new resource, NTCA wisely observes that the better approach is to use existing commercial solutions in combination with a TCPA safe harbor because that would provide more immediate relief to consumers.<sup>15</sup> Commenting parties widely agree that a TCPA safe harbor is an essential component of any database solution to promote use by the calling industry.<sup>16</sup> A safe harbor could be extended to commercial databases (as CenturyLink and others have asserted), or any newly created reassigned number database that is

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<sup>13</sup> Neustar Comments at 5. Further, “[t]he nature of the products currently on the market today underscores that preventing unwanted calls to reassigned numbers *requires robust solutions that are far more comprehensive than the mere collection of disconnect data.*” Neustar at 4 (emphasis added).

<sup>14</sup> NTCA Comments at 4. *See also* Neustar at 12 (noting it will take years for a Commission database to be operational, even under “the rosier of scenarios”).

<sup>15</sup> NTCA Comments at 5.

<sup>16</sup> *See, e.g.*, Edison Electric Institute Comments at 4; Comcast Corporation Comments at 14-17; National Retail Federation Comments at 9-10; Noble Systems Comments at 5 (stating that callers “will be largely motivated to use this service only if a safe harbor is granted[]”).

adopted as a result of this proceeding.<sup>17</sup> Moreover, given how robust existing commercial solutions are, a cost-benefit analysis is necessary to ensure that any new database tool would provide benefits that not only exceed those available under existing commercial solutions, but that are justified by the costs a new database tool would impose.

#### **IV. THE COST OF ANY NEW DATABASE RESOURCE SHOULD BE BORNE BY CALLING PARTIES**

Many commenters observe that creating a new reassigned database resource would “impose significant financial, operational, and technical costs on providers, third-party vendors, and callers.”<sup>18</sup> Neustar agrees, stating that “regardless of how these [database] issues are resolved, the costs of creating and maintaining a reassigned numbers database will be significant, although it is impossible to estimate accurately the development costs of a database before its parameters have been clearly defined.”<sup>19</sup> While CenturyLink favors keeping costs low by leveraging existing, readily-available information and resources as much as possible,<sup>20</sup> additional cost seems unavoidable. In light of these expectation that there will be (potentially high) costs,

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<sup>17</sup> See, e.g., NTCA Comments at 2-4, 6-8 and Neustar Comments at 5-9 (both supporting TCPA safe harbor for commercial database solutions). See also Comcast Corporation Comments at 14-15 (supporting TCPA safe harbor for any new reassigned number database).

<sup>18</sup> See, e.g., CTIA Comments at 4; see also INCOMPAS Comments at 2.

<sup>19</sup> Neustar Comments at 12.

<sup>20</sup> If the Commission proceeds with developing a new reassigned number database solution as an alternative to existing commercially available solutions, the new solution should rely upon query capability where available within service provider networks. This approach is preferable to the bulk transfer of data that has been assumed by some commenters. A query methodology would ensure data is up-to-date while offering greater protection of the data and lower risk of compromise, while also minimizing the cost to service providers.

as also acknowledged in the SFNPRM,<sup>21</sup> the Commission will need to define how these costs will be recovered if it decides to proceed with a database.

Others agree with CenturyLink in asserting that the costs of any reassigned number database should be borne by those entities most responsible for creating the need for such a database and that will benefit from its use, namely, the calling industry that initiates lawful robocalls.<sup>22</sup> INCOMPAS concurs, noting that “[i]t would be a sound policy for such costs to be borne by robocallers accessing the database seeking comprehensive and timely information on reassigned numbers.”<sup>23</sup> Although several parties agree on allocating costs in this manner, it is unclear whether the calling party industry will value and, therefore, pay to use any new database resource that may be created as a result of this proceeding. While, as discussed above, calling parties can be incented to use any existing or new database option through creation of a TCPA safe harbor, calling parties generally cannot be compelled by the Commission to use these resources. CTIA recognizes this tension, noting that the “Commission should consider how and whether the costs of a reassigned number database would be sufficiently recovered by good-faith callers.”<sup>24</sup> Because offering a reassigned number status information is a business venture, there is a high level of risk involved, especially in light of the uncertainty of the demand for such a

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<sup>21</sup> SFNPRM at ¶ 43 (“Commenters recognize that service providers will incur operational costs to provide the required data[]” (references omitted)).

<sup>22</sup> NTCA Comments at 9; INCOMPAS Comments at 3.

<sup>23</sup> INCOMPAS Comments at 3; NTCA Comments at 2 (stating “[i]t is only fair and equitable that the entities that deem robocalls to consumers a necessary part of their business operations—even if such calls are desired and consented to by consumers—foot the bill for a database that assists them in avoiding liability for violations of federal law.”).

<sup>24</sup> CTIA Comments at 8. *See also* Neustar Comments at 12-13 (stating that “the Commission also must assess how these costs translate into the fees that a caller utilizing the database would be required to pay[]”).

service.<sup>25</sup> Fueling this concern is that some commenting parties representing the calling party industry advocate that any new database resource should be free or very low cost so businesses of various sizes will be able to use it.<sup>26</sup> A cost-benefit analysis will be necessary to ensure that if the Commission were to move forward with any new database resource, that there would be sufficient benefit from and demand for such a resource to cover the costs of creating it.

**V. A VOLUNTARY OR WIRELESS-ONLY SOLUTION SHOULD BE CONSIDERED PRIOR TO MANDATING INDUSTRY-WIDE PARTICIPATION**

As noted above, the worth of a new reassigned number database remains subject to several key variables: TCPA interpretation issues, demand, cost of use, and robustness as compared to existing commercial tools. In addition, as noted by CenturyLink and others in initial comments, the consumer benefits to be realized by a new reassigned number database are also uncertain because this resource is designed to tackle only a sliver of the robocalls that are plaguing consumers, and will likely do nothing to abate the most egregious types of illegal robocalls that seek to defraud consumers.<sup>27</sup> Because of these unknowns, CenturyLink agrees with those commenters that urge the Commission to proceed with a voluntary or more limited database resource before imposing a broader mandate.

Commissioner O’Rielly has already offered his support for a voluntary solution: “the most sensible option at this point[]” would be for the Commission “to encourage voluntary reporting to existing, commercially available databases with appropriate legal protections for

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<sup>25</sup> Noble Systems Comments at 4.

<sup>26</sup> *See, e.g.*, ACA International Comments at 5; National Association of Federally-Insured Credit Unions Comments at 4 (arguing that credit unions should be exempt from any cost associated with using a reassigned number database); National Retail Federation Comments at 13.

<sup>27</sup> *See, e.g.*, CTIA Comments at 4; CenturyLink Comments at 2-3.

those that decide to do so.”<sup>28</sup> Other commenters share this view, and observe that a voluntary solution can be a useful means to gain more information about the utility of any new database tool. Noble Systems recognized that “[u]ntil further understanding is gained about the anticipated demand, it is more appropriate to utilize a voluntary reporting scheme. It is always possible to shift to a mandatory reporting scheme in the future, should reevaluation in the future determine this is necessary or appropriate.”<sup>29</sup> In addition, costs may be lower to implement a voluntary solution as opposed to a mandatory solution.<sup>30</sup> Moreover, mandatory reporting may not be even necessary if a TCPA safe harbor is instituted with respect to existing commercial tools, thereby increasing the market for reassigned number solutions and spawning increased development of enhanced commercial tools.<sup>31</sup>

Finally, CenturyLink reiterates its call for examination of a wireless-only database to address the reassigned number problem the Commission has identified. Given the high number of wireless number reassignments and the increase in subscribership of wireless services as opposed to wireline services, it would be useful to examine the utility of a wireless-only database solution and to see what consumer benefits would result. Trialing a wireless-only database would enable the Commission to gain more practical experience with the challenges of implementing a database and the benefits that would accrue to consumers, all within a more limited yet extremely relevant context, to determine whether a broader mandate is likely to serve the public interest.

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<sup>28</sup> See Statement of Commissioner Michael O’Rielly, at 1, in association with the SFNPRM.

<sup>29</sup> Noble Systems Comments at 4.

<sup>30</sup> Noble Systems Comments at 4.

<sup>31</sup> See NTCA Comments at 5.

## VI. CONCLUSION

CenturyLink appreciates the Commission's continued focus on stopping illegal robocalls and urges the Commission to proceed carefully before implementing a new reassigned number database. As a threshold matter, the TCPA implementation issues currently under consideration through the *ACA International* decision need to be settled so the legal liability landscape is firm. Once that occurs, the Commission should analyze whether a new resource is necessary given the existing commercial solutions available today, considering the costs of implementing a new tool along with the added benefits a new tool stands to provide. To spur improvement in and adoption of those solutions, the Commission should offer a TCPA safe harbor to users of commercial tools that are sufficiently robust. If, after such analysis, the Commission concludes to move forward with a new database, costs should be minimized and borne by users of the database. Use of any new resource that may be created should be encouraged by providing a TCPA safe harbor. Finally, any database that may be considered should be implemented first on a voluntary or limited basis to ensure meaningful consumer benefit will result. A wireless-only solution would be sufficiently targeted to address the concerns raised in this proceeding and to test whether expanding this resource to the entire industry would provide sufficient benefits to justify the costs.

Respectfully submitted,

**CENTURYLINK**

By: /s/ Jeanne W. Stockman  
Jeanne W. Stockman  
14111 Capital Boulevard, Room 3162  
Wake Forest, NC 27587  
919-554-7621  
Jeanne.w.stockman@centurylink.com

Its Attorney

July 9, 2018